BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JUNIOR APPLEBY Claimant	
VS.) Docket No. 141,909
BEECH AIRCRAFT CORP.) Docket No. 141,909
Respondent AND	
BEECH AIRCRAFT S/I FUND	
Insurance Carrier AND	
WORKERS COMPENSATION FUND	}

ORDER

Respondent appeals from an Order dated January 26, 1995, granting claimant's request for additional medical benefits.

Issues

This appeal involves a post-award application for medical benefits. The Administrative Law Judge ordered an independent medical examination. The preliminary Order expressly states that the examination authorizes Dr. Eyster to examine the claimant to determine whether claimant's current complaints relating to his low back and left knee are a direct and natural result of claimant's original right knee injury. The Administrative Law Judge also initially ordered respondent to pay claimant's attorney's fees in the amount of \$500.00 pursuant to K.S.A. 44-536(g). By subsequent Order, the Administrative Law Judge withdrew the Order for attorney's fees indicating that a decision regarding attorney's fees would be made at a later date. Respondent also appealed the Order for attorney's fees. Once the Order for attorney's fees was withdrawn, respondent requested to dismiss its appeal on that issue. Claimant's attorney requests consideration of the attorney's fee issue and in addition requests attorney's fees for work done in connection with this appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds and concludes as follows:

- (1) The Administrative Law Judge has withdrawn the Order for attorney's fees and there is, therefore, no Order for review by the Appeals Board relating to attorney's fees. Claimant's request for attorney's fees in connection with this appeal should be submitted to the Administrative Law Judge along with the request for other attorney's fees in connection with these post-award proceedings.
- (2) Claimant's post-award application for medical benefits was made by application for preliminary hearing and for purposes of the standard of review on appeal, is treated the same as a preliminary hearing. As a preliminary hearing Order, it is reviewable only if the Administrative Law Judge has exceeded his or her jurisdiction. K.S.A. 44-534a.

Respondent argues that the Administrative Law Judge should not have ordered examination or treatment for claimant's low back or left knee because the original Award was not for injury to the left knee or low back. In fact, the original Award denied claimant's contention that the low back had been injured as a result of an altered gait due to a right knee injury. No claim was made at that time for injury to the left knee.

In this review and modification proceeding, claimant asserts that the injury to the right knee, which was the subject of the original Award, has since resulted in a need for medical treatment to the left knee and low back. Claimant contends this need is a natural and probable consequence of the original injury to the right knee. Following the preliminary hearing, the Administrative Law Judge ordered an independent medical examination to be performed by Dr. Eyster for the express purpose of determining whether the left knee and low back symptoms were a natural and probable consequence of the injury of the right knee. The Appeals Board finds the Administrative Law Judge did have jurisdiction to order an independent medical examination for the purpose stated. The Appeals Board, therefore, concludes that the Order should remain in effect as entered.

WHEREFORE, the Appeals Board finds that the application for review of an order for attorney's fees should be dismissed. The Appeals Board further finds that the Order of the Administrative Law Judge dated January 26, 1995 relating to the independent medical examination remains in full effect as originally entered.

IT IS SO ORDERED.
Dated this day of May, 1995.
BOARD MEMBER
BOARD MEMBER

BOARD MEMBER

c: Norman I. Cooley, Wichita, Kansas Terry J. Torline, Wichita, Kansas Nelsonna Potts Barnes, Administrative Law Judge George Gomez, Director